

MONDAY, 10 o'clock, A. M.,
December 20th, 1847.

Senate met—roll called—The following Senators answered to their names:

Messrs. Abbott, Bourland, Brashear, Burleson, Clark, Cuny, Dancy, Gage, Grimes, Jewett, McRea, Navarro, Parker, Perkins, Phillips, Wallace, Williams, Williamson and Wooten—quorum present—The Journal of Saturday was read and adopted.

Mr. Gage presented the petition of sundry citizens of Dallas county, praying the passage of a law, authorizing them to locate the Seat of Justice of said county by vote—referred to the committee on counties and county boundaries.

Mr. Perkins presented the petition of Elijah D. Holland, praying for relief, which was referred to the committee on Private land claims.

Mr. Wallace presented the petition of R. F. Miller, referred to the committee on the Judiciary.

Mr. Williamson offered the following Resolution,

“Resolved, That the committee on arrangements for the inauguration of Governor and Lieut. Governor elect, be requested to invite the Rev. Mr. Thrall to officiate as Chaplain for the occasion.” Adopted.

Mr. Williams by leave, introduced a bill to be entitled an act better to define the boundary lines of Grayson county—read 1st time.

Mr. Williams, by leave, introduced a bill to be entitled an act to provide for the location of the county site of Grayson county—read 1st time.

The Senate proceeded to the orders of the day.
A bill to be entitled an act to admit Asa H. Willie and Josiah F. Crosby to practice law in the various counties of this State—read 2d time, and

On motion of Mr. Williamson, referred to the committee on the Judiciary.

A bill to amend the third section of an act entitled an act providing for the transfer of the records of administrators to new counties—read 2d time, and

On motion of Mr. Williamson, referred to the committee on the Judiciary.

A bill to authorize and require the Commissioner of the General Land Office to issue a patent for one league and labor

of land to the heirs of Henry O. Roberts, dec'd., assignee of A. O. Williamson—read 2d time, and

On motion of Mr. Wallace, referred to the committee on the Judiciary.

A bill to repeal an act to direct the mode of voting in all popular elections—read 2d time, and

On motion of Mr. Williamson referred to committee on privileges and elections.

Joint Resolution for the benefit of the Texas volunteers, called into the service of the country in the year 1846—read 2d time, and

On motion of Mr. Burleson, referred to the committee on the Militia.

A bill to be entitled an act to prohibit the recovery of money, property or any article of value lost or won on bets or wagers—read 2nd time.

Mr. Williamson moved to lay the bill on the table—lost.

On motion of Mr. Jewett, referred to the committee on the Judiciary.

A Joint Resolution instructing the Senators and requesting the Representatives in Congress relative to suitable places for holding the sessions of the United States District Court—read 2nd time, and

On motion of Mr. Williamson, referred to the committee on the Judiciary.

A message was received from the House of Representatives through their Chief Clerk, Mr. Ben F. Hill, informing the Senate, that the House had appointed a committee consisting of Messrs. Robertson, Dooley and Davis of Liberty, to act in conjunction with a like committee on the part of the Senate to make arrangements for the inauguration of the Governor and Lieut. Governor elect.

On motion of Mr. Parker, the Senate went into Executive session. The business before the Senate in its executive capacity having been disposed of—

On motion of Mr. Williamson, the Senate adjourned until 3 o'clock, P. M.

3 o'clock, P. M.

Senate met—roll called—quorum present.

A message was received from His Excellency the Governor, presenting three several communications in writing, which were read—one of which being the report of the Attorney General, was referred to the committee on the Judiciary, which report was as follows:

OFFICE OF THE ATTORNEY GENERAL, }
Dec. 20th, 1847. }

To His Excellency, J. Pinckney Henderson,

SIR,—In compliance with usage and the law, I have the honor to submit to you the following report of the transactions of this office.

I herewith transmit a copy of the report of Thomas Johnson Esq., District Attorney of the third judicial district, being the only report of the kind that has been received: and as it contains many important suggestions in relation to the criminal laws of the State, I would most respectfully recommend that it be submitted to the consideration of the Legislature.

One of the first of my official acts, was to comply with the Ordinance of the Convention, requiring me to institute proceedings against those Colony Contractors, who had entered into contracts with the President of the late Republic; and before the first term of the District Courts was held under the State Government, I prepared petitions to try the validity of each of those contracts, and transmitted them to the appropriate District Attorneys. So far as I have been advised, these causes are still pending in the District Courts for the respective counties in which they were instituted. These petitions were, in the first instance, in the name of the Governor; but a doubt having subsequently arisen as to whether the suits should not have been brought in the name of the State, I have instructed the District Attorneys to file other petitions, which has doubtless been accordingly done. And in order to render the law certain on the subject, it would probably advance the public interest, to advise the Legislature to pass an act requiring suits, in which the State may have an interest, to be instituted in the name of the State.

Of the Empresario cases, which were pending in the District Court of Travis county, two were dismissed by the court

at its last Spring term. The cause of Sterling C. Robertson was argued and submitted to the Supreme Court at its last term, but no decision of the case has yet been announced.

Before the commencement of the fall term 1846 of the District Court of Travis county. I notified His Excellency A. C. Horton, then the acting Governor of the State, that my previous engagements were such as to render it impracticable for me to be in attendance at that term of the court, and that my former connection with some of the Empresario cases, would make it improper for me, at any time, to attend to them on the part of the Government. Upon the receipt of this information, Governor Horton, acting under the provisions of the law, which permitted the Executive of the Republic to employ assistant counsel in these cases, employed James Webb Esq., to attend to them on the part of the State, assuring him, at the same time, that the Legislature would make an adequate appropriation to pay him for whatever services he might render. Under this agreement he has attended to those two cases in the District Court, in which I could not appear for the State. One of them, in that court, resulted unfavorably to the State, but an appeal was taken from this decision, and the case is now pending in the Supreme Court. In the other, a verdict of a jury was rendered in favor of the State, which, however, was set aside by the court, and a new trial awarded to the plaintiff. At a subsequent term of the court a mis-trial was had in this cause: and the object of this portion of my communication is, to ask that the Legislature be advised to make an appropriation sufficient to pay for the services which have already been rendered in these causes, and to provide that in future they shall, on the part of the State, receive that attention which their importance requires.

Since the adjournment of the last Legislature, various suits have been instituted in the District Courts of the State, having for their object the establishment of certificates, which were issued by Boards of Land Commissioners prior to the year 1840, without the necessity of complying with the provisions of the "act to detect fraudulent land certificates, and "to provide for issuing patents to legal claimants." The further object of these suits was, to obtain a decision of the court; declaring this act to be unconstitutional. The immediate effect of such a decision would be, to establish, as valid, against the government, all those fraudulent claims, which have hith-

erto been objects of so much solicitude to the Legislature, to the Convention, and to the people of Texas. And at the solicitation of the District Attorney, I contributed my aid in the defence of one of those cases, which, about twelve months since, was instituted in the District Court for the county of Galveston. This cause there resulted favorably to the defendant, but the plaintiff appealed from that decision, and it is now pending in the Supreme Court of the State. And it is by no means, improbable, that before the meeting of the next Legislature, some causes for the establishment of these claims, will be taken to the Supreme Court of the United States where unless some adequate provisions be previously made, the interest of the State will be entirely undefended. To this subject the attention of the Legislature should, I think, be immediately directed. For, if these claims be established against the State, they will be amply sufficient to exhaust the most valuable portion of her public domain, which is the only available resource to which she can resort for the payment of her pecuniary liabilities.

At the last term of the Supreme Court, several causes were determined, in which the respective parties claimed of the government, the quantity of land allowed by law to colonists and settlers. A portion of these resulted favorably to the claimants, and a portion resulted favorably to the Government. But no case involving a large interest has, as yet, been decided by that court against the State, though there still exists upon its docket a number of causes involving a vast amount of property. These have claimed, and must continue to claim a large share of time and attention, to the exclusion of other duties of my office, which become of minor importance when compared to them.

The attention to these numerous duties, which were of overwhelming importance to the State, will, I trust, furnish a sufficient excuse for my not having complied with the requisitions of the act to provide for revising, digesting and arranging the laws, both civil and criminal, and to report the same to you, to be laid before the Legislature at its present session. To attend to the other, which I deemed the more important duties of my office, and to attend to this also, would have been utterly impracticable. For a very slight reflection upon the subject, will be sufficient to convince any reasonable mind, that to discharge the duties prescribed by this act with either credit to

myself, or advantage to the State, would have required my exclusive attention for nearly the whole period of my term of office. I, therefore, solicit you to ask the Legislature to excuse me from making such a report, upon the ground that it was impossible to discharge the whole of my official duties which the law had prescribed, and that of these, I discharged those which were the most urgent and the most important. I would further suggest that you recommend to the Legislature, the passage of a resolution appointing some competent gentleman, to digest the acts of a general nature now in force, and that they make a suitable appropriation to remunerate him for the discharge of this laborious and important duty. For without this, the duties of the office of Attorney General are surely sufficiently burthensome. And I would; with great respect, suggest that the policy would be a most mistaken one which would throw this arduous task upon that officer, whose duty it is to attend to every criminal cause in the Supreme Court, and to every civil cause in that court, in which the State may have an interest; and upon whose professional services the State also relies to defeat claims for probably more than thirty millions of acres of the public domain. This view of the subject becomes still more imposing when it is remembered that the different tribunals to which some of a large class of these claims, were recently submitted, gave diametrically opposite decisions in regard to their validity. And though many of them have, in effect, been denounced as fraudulent and void by the laws and the constitution of our State, yet the claims themselves have been sustained as valid by the decision of a court of the United States, which could have resulted alone from the fact that the court considered that portion of our laws and our constitution, as being in opposition to the constitution of the late Republic and that of the United States.

In compliance with that portion of the statute which requires me to suggest such amendments to the laws, as I may deem advisable. I will direct attention to "the act to organize Probate Courts," and will advise its repeal, and that another be enacted in its stead. I would also advise that a more summary remedy be given for the collection of the license tax. It has repeatedly happened that transient persons have refused to comply with that portion of the law, which requires the payment of such a tax, and would exercise their calling, trade or profession, while a suit was pending to enforce its provisions,

and before its termination they would either sell their property or remove with it beyond the limits of the State.

The Legislature should, I think, be strongly advised to pass an act to carry into effect the "act to establish a State Penitentiary" and to modify the criminal laws of the State accordingly. For the spirit of the age, and of the State in which we live, seems to be entirely averse to the enforcement of sanguinary laws. And daily experience proves that a punishment which is mild is more apt to be inflicted than one which is severe, and that the certainty, far more than the severity of the punishment prevents the perpetration of crimes. But, I would not be understood as desiring the entire abolition of capital punishment. There are some crimes of an enormous character, such for example, as malicious murder, rape or arson, which ought in my judgment, to receive a punishment not less severe than death.

In order to guard the interest, and enforce the rights of the State, in those important civil causes which have already arisen, and must continue to arise in the District Courts; and in order to give full effect to those laws which were enacted for the prevention and punishment of crimes. I would most respectfully recommend an increase of the compensation of District Attorneys. Such inducements should, I think, be held out by the Legislature, as would secure for these offices the ablest attorneys within the respective districts. For it is an alarming fact that the solvency or insolvency of the State depends upon the ultimate decision of the questions involved in causes now pending in the District Courts. And, independently of all this, surely the State could make no better appropriation than one which would infuse strength into the arm of the law; which would tend directly to secure the peace and order of the whole community, and would at the same time, throw, as it were, a shield of protection around the property and the lives of its citizens.

I have the honor to be your ob'dt. serv't.

JOHN W. HARRIS.

One a communication in reply to a resolution of the Senate calling upon him for information respecting suits involving the validity of fraudulent land certificates which was referred to the committee on the Judiciary, and is as follows:

EXECUTIVE OFFICE,
Austin, Dec. 20th 1847.

To the Honorable the Senate :

In compliance with a resolution passed by your honorable body, on the 17th instant. I now have the honor to lay before you such information, as the Executive is in possession of respecting suits now pending in our State and the United States Courts, involving the validity of fraudulent land certificates.

I refer you to the report of the Attorney General of the State, which I this day laid before you, for all of the facts which I am in possession of, connected with a suit brought in the District Court at Galveston, (and which is now in the Supreme Court of the State) the object of which, it is understood, is to settle a principle in our courts, which will establish against the State a large portion of the claims usually denominated fraudulent. I have also been informed by the Commissioner of the General Land Office, that a suit is now pending against him in the District Court of Travis county, to compel him, as Commissioner, to issue a patent upon a certificate for a league and labor of land which issued in Jasper county, and was not recommended by the Commissioners appointed under the law to detect fraudulent land claims, but which was embraced with many others, in a fraudulent and forged return, purporting to be the return of the Land Board from Jasper county.

The only case which has been commenced, as far as I am advised, in the United States District court, for the purpose of establishing any of those claims, is one which was commenced at Galveston, and removed to New Orleans for trial, where it was argued last Spring by V. E. Howard Esq., who represented the interest of Texas. The Judge, before whom it was tried, did not determine the case, at the time it was argued, but it is understood that he lately gave an opinion in the case in favor of the claimant, and against the interest of the State. This case will probably be taken by appeal to the Supreme Court of the United States, as it is understood both the plaintiff and defendant are interested in having the judgment of the District Court confirmed by the highest tribunal, as a precedent to guide in all such cases in future.

Upon inquiry, I learn from the County Surveyor of Bexar county, and V. E. Howard Esq., who appeared in the cases on

behalf of the State, that three suits have recently been commenced in the county of Bexar against said County Surveyor, for the purpose of compelling him to survey between *fourteen and fifteen hundred* leagues and labors of those spurious claims. The answers in these cases have been prepared by Mr. Howard and filed, and the cases continued until the next spring term of the court.

I am, also, informed by the said Surveyor, that he has been notified by the claimants, that about three hundred similar claims will be presented to him soon for location and survey, upon which, it is presumed, suits will likewise be commenced.

I regret that the limited time allowed me, has prevented me from returning a more satisfactory response to the enquiry of your honorable body.

The above facts will, however, be sufficient to show to you that the interest which the State has involved in these cases, is of great magnitude.

J. PINCKNEY HENDERSON.

And the other was acted upon in Executive session.

Mr. Williamson presented the petition of Benjamin Bryant, praying that certain children therein named may be legitimated—referred to the committee on the Judiciary.

Mr. Phillips offered the following resolution :

“Resolved, That the Commissioner of the General Land Office be requested to communicate to this House, whether or not, any archives from the original Department of Bexar are now in his office, and if so, whether or not any of such archives relate to the land titles of the State.” Adopted.

Mr. Phillips offered the following resolution :

“Resolved, That the Secretary of State be requested to communicate to this House, whether or not any archives from the original Department of Bexar, are now in his office, and if so, whether or not any such archives relate to the land titles of the State.” Adopted.

Mr. Wallace moved, that the committee on Enrolled and Engrossed Bills be separated, and a separate committee be appointed on each—carried.

On motion of Mr. Wallace, the 55th section of the rules of the Senate was so amended as to read—“It shall be in order for the committees on Engrossed and Enrolled bills to report at any time.”

Mr. Dancy moved to strike out the words "ayes and noes" wherever they occur in the rules of the Senate, and insert the words "yeas and nays." Lost.

The committee on Contingent expenses made the following report:

Hon. A. C. Horton, President of the Senate:

The committee on Contingent Expenses, to whom was referred the resolution of the Senate instructing said committee to contract for 110 copies of each publication of the "Texas Democrat," and also the printing of 500 copies of the Governor's message; beg leave to report, that they have contracted for the number of copies of each, called for by the resolution, at the following rates—five cents a piece for each number of the Democrat, and fifteen dollars for 500 copies of the Governor's message to be furnished in pamphlet form.

PHIL M. CUNY, *Chairman.*

Which report was adopted.

Mr. Perkins offered the following Resolution:

"*Resolved*, That the Committee on Contingent Expenses be instructed to contract for 110 copies of the Texas Democrat, in addition to the number already contracted for, for the use of the Senate,—upon which the yeas and nays being called, stood thus:

YEAS.—Messrs. Bourland, Brashear, Dancy, Gage, Perkins and Williams—6 yeas.

NAYS.—Messrs. Abbott, Burleson, Clark, Cuny, Grimes, Jewett, McRea, Navarro, Parker, Phillips, Wallace and Williamson—11. Lost.

On motion of Mr. Williamson, the Senate adjourned until to-morrow, half past 1 o'clock, P. M.

TUESDAY, 1-2 past 1 o'clock, P. M., }
December 21st, 1847. }

Senate met—roll called—the following Senators answered to their names: